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REQUEST FOR THE INCLUSION OF A SUPPLEMENTARY SUB-ITEM IN THE AGENDA OF THE FIFTY-FIRST SESSION

INTERNATIONAL COURT OF JUSTICE ADVISORY OPINION ON THE LEGALITY OF THE THREAT OR USE OF NUCLEAR WEAPONS

Letter dated 21 August 1996 from the Permanent Representative of Malaysia to the United Nations addressed to the Secretary-General

In accordance with rule 14 of the rules of procedure of the General Assembly, I have the honour to request that a supplementary sub-item entitled "International Court of Justice Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons" be included in the agenda of the fifty-first session of the General Assembly under item 71, "General and complete disarmament".

In conformity with rule 20 of the rules of procedure of the General Assembly, I attach herewith an explanatory memorandum (see annex).

(Signed) RAZALI Ismail
Ambassador

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ANNEX

Explanatory memorandum

By its resolution 49/75 K, adopted on 15 December 1994, the United Nations General Assembly, pursuant to Article 96, paragraph 1, of the Charter of the United Nations, requested the International Court of Justice urgently to render its advisory opinion on the following question: "Is the threat or use of nuclear weapons in any circumstance permitted under international law?"

Written statements were submitted to the Court by 28 Member States and in the course of public sittings held from 30 October to 15 November 1995, the Court heard oral statements from 22 States. Malaysia presented both written as well as oral statements to the Court.

At a public sitting on 8 July 1996, the International Court of Justice recognized that for the first time in history, the threat or use of nuclear weapons is generally contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law, while also recognizing that there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament.

Specifically the Court delivered the following opinion:

"THE COURT,

"(1) By thirteen votes to one,

Decides to comply with the request for an advisory opinion;

"(2) Replies in the following manner to the question put by the General Assembly:

A. Unanimously,

There is in neither customary nor conventional international law any specific authorization of the threat or use of nuclear weapons;

B. By eleven votes to three,

There is in neither customary nor conventional international law any comprehensive and universal prohibition of the threat or use of nuclear weapons as such;

C. Unanimously,

A threat or use of force by means of nuclear weapons that is contrary to Article 2, paragraph 4, of the United Nations Charter and that fails to meet all the requirements of Article 51, is unlawful;

D. Unanimously,

A threat or use of nuclear weapons should also be compatible with the requirements of the international law applicable in armed conflict, particularly those of the principles and rules of international humanitarian law, as well as with specific obligations under treaties and other undertakings which expressly deal with nuclear weapons;

E. By seven votes to seven, by the President's casting vote,

It follows from the above-mentioned requirements that the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law;

However, in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake;

F. Unanimously,

There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control."

The Court's decision is important in that it set the legal parameter whereby the use of nuclear weapons indeed ignores customary international law and international treaties such as the Geneva and Hague Conventions. The threat to the survival of mankind by the existence of nuclear weapons grants the international community the right to take a position on the illegality of such weapons.

The General Assembly had requested the advisory opinion in order to assist its activities in the area of nuclear disarmament. Subsequently, the International Court of Justice rendered an opinion which has direct impact on the activities of the General Assembly and on the policies and obligations of Member States in the area of nuclear disarmament.

Malaysia believes that the General Assembly should acknowledge the Court for rendering an opinion in response to the Assembly's request. Malaysia also believes that an opportunity should be given for Member States to discuss the opinion during the fifty-first session, with consideration of appropriate action by the General Assembly in response to the Court's opinion.

The Government of Malaysia strongly believes that the inclusion of this sub-item in the agenda of the fifty-first session of the General Assembly will be in accordance with current approaches in the international scene towards nuclear disarmament.

For these reasons, Malaysia requests the inclusion of the item "International Court of Justice Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons" in the agenda of the fifty-first session of the General Assembly.